

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

FILED

JUL 16 2009

CHRISTOPHER WAYNE HURD,

Petitioner,

vs.

WALTER DINWIDDIE,

Respondent.

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ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY _____ DEPUTY

No. CIV-09-227-W

ORDER

On June 15, 2009, United States Magistrate Judge Doyle W. Argo issued a Report and Recommendation and made various findings and recommendations regarding whether the admittedly unexhausted claims for relief (ineffective assistance of trial counsel and ineffective assistance of appellate counsel) asserted by petitioner Christopher Wayne Hurd in his Petition for a Writ of Habeas Corpus ("Petition") should be stayed and this matter held in abeyance pending exhaustion by Hurd of available state court remedies or whether Hurd's claims should be dismissed under title 28, section 2254(b)(1) of the United States Code.

Hurd was advised of his right to object to the Report and Recommendation, but he has not filed an objection within the allotted time. Based upon the record, the Court concurs with Magistrate Judge Argo's finding that a stay of this matter, as Hurd has requested, is not warranted and further concurs with Magistrate Judge Argo's recommendation that this matter be dismissed without prejudice.

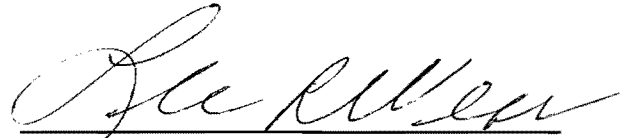
Accordingly, the Court

(1) ADOPTS the Report and Recommendation [Doc. 10] issued on June 15, 2009;

(2) DENIES Hurd's Motion to Hold Petition in Abeyance [Doc. 3] file-stamped February 26, 2009, and his Supplemental Motion for Stay and Abeyance [Doc. 8] file-stamped March 25, 2009; and

(3) DISMISSES without prejudice Hurd's Petition [Doc. 1] file-stamped February 26, 2009, to permit Hurd the opportunity to pursue his unexhausted federal law claims in state court.

ENTERED this 16th day of July, 2009.

A handwritten signature in black ink, appearing to read "Lee R. West", is written over a horizontal line.

LEE R. WEST
UNITED STATES DISTRICT JUDGE